

RECEIVED  
CENTRAL FAX CENTER  
MAR 09 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Micko	)	Art Unit: 2878
	)	
Serial No.: 10/600,314	)	Examiner: Lee
	)	
Filed: June 20, 2003	)	1187-1.CIP
	)	
For: IMPROVED PIR MOTION SENSOR	)	March 9, 2006
	)	750 B STREET, Suite 3120
	)	San Diego, CA 92101
	)	

REPLY BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

This responds to the Examiner's Answer dated March 6, 2006. As best understood, the Answer responds with mere legal boilerplate to Appellant's observation that combining Sugimoto et al. with Schwarz would not result in Claims 1 and 8, but rather in what would result from the proposed combination, namely, two detectors as taught in Sugimoto et al. each one of which has two optics of differing focal lengths, but not having a focal length that is absent from the optics of the other detector.

The Answer then attempts to conjure an alleged "admission" into support for the rejections, but in so doing ignores what the claims actually state. Specifically, Appellant has argued that Schwarz indeed contemplates using more than one detector, but that this additional detector would be a duplicate of the single detector Schwarz teaches with two optics, just mounted in a different part of the same monitored area as taught by Schwarz. In other words, the references at most teach two detectors each with two optics systems that are

1187-1CF.RPL

CASE NO.: 1187-1.CIP  
Serial No.: 10/600,314  
March 9, 2006  
Page 2

PATENT  
Filed: June 20, 2003

identical to each other, in contrast to the present claims. The Answer leaps on this observation as some sort of evidence of unpatentability by contending that Appellant has "admitted" that Schwarz teaches a first detector with optics having a first focal length and a second detector with optics having a second focal length *without acknowledging that independent Claim 1 explicitly requires that the second detector not have an optics of the same focal length as the first optics or independent Claim 8 requires that a second focal length is associated with the second detector but not with the first detector.* This seemingly deliberate and in any event crucial omission destroys whatever "gotcha" value the conferees believed their argument possessed, militating toward reversal.

*Apropos* Claims 1 and 4, the Answer alleges that Appellant is arguing features that are not in the claims. This is a peculiar allegation to say the least, coming, as it does, from an examiner plus two SPEs all of whom presumably bothered to read the claims before they made the allegation. Consider that Appellant's point as argued is that frequency differences are never mentioned in the references, much less do the references mention that different frequencies are output from different detectors in response to a moving object (Claim 1) or outputting a signal indicating the presence of the moving object only if both the first and second (different) frequencies are substantially simultaneously received, and otherwise not outputting the signal indicating the presence of the moving object (Claim 4). Ignoring the gravamen of an argument that indeed is reflected in the claims militates toward reversal.

The Answer continues the pattern of this prosecution in identifying prior art "suggestions" when there are none by alleging that "analysis of [the signals in Sugimoto] having different frequencies allows the detection of body (sic) moving through the field of view" (top of page 7 of the Answer). It does? Then why doesn't

1187-ICP.RPL

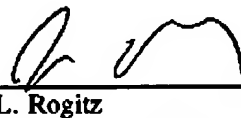
CASE NO.: 1187-1.CIP  
Serial No.: 10/600,314  
March 9, 2006  
Page 3

PATENT  
Filed: June 20, 2003

Sugimoto et al. even mention frequency differences? Such a telling index of hindsight reconstruction merits reversal.

Regarding the allegations on page 7 of the Answer related to separate housings, the conferees make Appellant's point when they admit on the record that the applied reference lacks the necessary detail, but it doesn't matter because in essence, as argued by the conferees, Sugimoto et al. nowhere *prohibits* the claimed feature. As the Board knows, the test for patentability is not whether a claimed feature is negatively prohibited in a reference, but rather whether it is positively suggested. This fundamental misunderstanding of what the law of obviousness is all about dooms the rejections. This section of the Answer goes on to perpetuate legal error already illuminated in Appellant's original Brief.

Respectfully submitted,



John L. Rogitz  
Registration No. 33,549  
Attorney of Record  
750 B Street, Suite 3120  
San Diego, CA 92101  
Telephone: (619) 338-8075

JLR:jg

1187-1CP.RPL